

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

PONCA TRIBE OF INDIANS	)	
OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-06-1439-C
	)	
THE UNITED STATES OF AMERICA,	)	
et al.,	)	
	)	
Defendants.	)	

ORDER REGARDING JOINT STIPULATION OF SETTLEMENT

This matter is before the Court on the joint stipulation of settlement and [proposed] order of Plaintiff and Defendants (hereinafter “the Parties”).

Upon consideration of the Parties’ joint stipulation and for good cause shown, it is hereby ORDERED that the joint stipulation should be and hereby is APPROVED and ENTERED as an order of this Court.

Further, it is hereby ORDERED that

1. This Joint Stipulation of Settlement is the result of compromise and settlement between the Parties. It shall not constitute or be construed as an admission of liability or wrongdoing by any Party, and it shall not be utilized or admissible as precedent, evidence, or argument in any other proceeding, except as may be necessary to ensure compliance with its terms and conditions or to carry out the terms and conditions hereof.

2. Defendants will pay to Plaintiff the sum of one million thirty thousand dollars (\$1,030,000.00), in full, complete, and final settlement of all claims, causes of action,

obligations, or liabilities that Plaintiff has asserted or could have asserted—as well as all claims, causes of action, obligations, or liabilities for which a factual basis exists, regardless of whether the claims, causes of action, obligations, or liabilities have legally accrued as of the date of the Court’s entry of this Joint Stipulation of Settlement as an Order—either in any administrative action or in a case in the United States District Courts or the United States Court of Federal Claims, relating in any way to any of the following issues:

a. Defendants’ obligation to provide a historical accounting of Plaintiff’s trust funds and non-monetary trust assets or resources, and Defendants’ fulfillment of any such obligation;

b. Defendants’ alleged mismanagement of Plaintiff’s non-monetary trust assets or resources, including but not limited to any claim or allegation that:

i. Defendants failed to make Plaintiff’s non-monetary trust assets or resources productive;

ii. Defendants failed to obtain an appropriate return on, or appropriate consideration for, Plaintiff’s non-monetary trust assets or resources;

iii. Defendants failed to record or collect, fully or timely, or at all, rents, fees, or royalties, or other payments for the transfer, sale, encumbrance, or use of Plaintiff’s non-monetary trust assets or resources;

iv. Defendants failed to preserve, protect, safeguard, or maintain Plaintiff’s non-monetary trust assets or resources;

v. Defendants permitted the misuse or overuse of Plaintiff's non-monetary trust assets or resources;

vi. Defendants failed to manage Plaintiff's non-monetary trust assets or resources appropriately;

vii. Defendants failed to enforce the terms of any permits, leases, or contracts for the transfer, sale, encumbrance, or use of Plaintiff's non-monetary assets or resources;

viii. Defendants failed to prevent trespass on Plaintiff's non-monetary trust assets or resources;

ix. Defendants failed to report or provide information about Defendants' actions or decisions relating to Plaintiff's non-monetary trust assets or resources; and

x. Defendants transferred, sold, encumbered, allotted, managed, or used Plaintiff's non-monetary trust assets or resources (including but not limited to any of Plaintiff's lands or minerals), improperly or inappropriately;

c. Defendants' alleged mismanagement of Plaintiff's trust funds, including but not limited to any claim or allegation that:

i. Defendants failed to invest tribal income in a timely manner;

ii. Defendants failed to obtain an appropriate return on invested funds;

iii. Defendants failed to deposit monies into trust funds or disburse monies from trust funds in a proper and timely manner; and

iv. Defendants failed to report or provide information about Defendants' actions or decisions relating to Plaintiff's trust fund accounts.

For purposes of this Joint Stipulation of Settlement, Plaintiff's trust funds include but are not limited to the monies that have been received by Plaintiff in compensation for or as a result of the settlement of Plaintiff's pre-1946 claims brought before the Indian Claims Commission (ICC) in ICC Docket Numbers 322, 323, and 324, and the monies in any Tribal-related accounts; any proceeds-of-labor accounts; any Tribal-Individual Indian Money (Tribal-IIM) or special deposit accounts; any Indian Money-Proceeds of Labor (IMPL) accounts; any Treasury accounts; any third-party bank accounts; any legislative settlement or award accounts; and any judgment accounts (regardless of whether the judgment accounts are principal or interest accounts, regardless of whether the judgment accounts are established pursuant to federal legislation, and regardless of whether the judgment accounts are maintained, managed, invested, or controlled by either Interior or Treasury); and

d. Defendants' alleged failure to perform trust duties allegedly owed to Plaintiff, at any time, up to the date of the Court's entry of this Joint Stipulation of Settlement as an Order.

3. In consideration of the payment of one million thirty thousand dollars (\$1,030,000.00) by Defendants and upon the Court's entry of this Joint Stipulation of Settlement as an Order and dismissal with prejudice of this case, Plaintiff releases

Defendants from, and Plaintiff covenants not to sue on, all claims, causes of action, obligations, or liabilities that Plaintiff has asserted or could have asserted — as well as all claims, causes of action, obligations, or liabilities for which a factual basis exists, regardless of whether the claims, causes of action, obligations, or liabilities have legally accrued as of the date of the Court’s entry of this Joint Stipulation of Settlement as an Order — either in any administrative action or in a case in the United States District Courts or the United States Court of Federal Claims, relating to the issues set forth in Paragraph 2 above. Further, Plaintiff waives any other claims, causes of action, obligations, or liabilities that Plaintiff has asserted or could have asserted—as well as any other claims, causes of action, obligations, or liabilities for which a factual basis exists, regardless of whether the claims, causes of action, obligations, or liabilities have legally accrued as of the date of the Court’s entry of this Joint Stipulation of Settlement as an Order—either in any administrative action or in a case in the United States District Courts or the United States Court of Federal Claims, relating to Defendants’ management and accounting of Plaintiff’s trust funds and non-monetary trust assets or resources.

4. a. Attestation as to Accuracy of Account Balances Stated by OST. In consideration of the payment of one million thirty thousand dollars (\$1,030,000.00) by Defendants and upon the Court’s entry of this Joint Stipulation of Settlement as an Order, Plaintiff accepts as accurate the balances of Plaintiff’s trust fund accounts, as those balances are stated by OST on the date of the Court’s entry of this Joint Stipulation of Settlement as an Order.

b. Attestation as to Account Balances. Plaintiff accepts the Statements of Performance issued by OST for the period ending immediately before the date of the Court's entry of this Joint Stipulation of Settlement as an Order, as accurate and full, true, and correct statements of Plaintiff's trust fund accounts. The balances for Plaintiff's trust fund accounts shall be as stated in the Statements of Performance issued by OST for the period ending immediately before the date of the Court's entry of this Joint Stipulation of Settlement as an Order (attached hereto as Exhibit 1);

c. Attestation regarding Periodic Statements of Performance. The Parties agree that Defendants have no responsibility under present applicable federal statutes and regulations to account for and report to Plaintiff regarding Plaintiff's Trust Funds, except for the requirements of the American Indian Trust Fund Management Reform Act of 1994, P.L. 103-412, 108 Stat. 4238 (hereinafter the "Reform Act of 1994"), and any regulations adopted thereunder.

d. In satisfaction of its reporting responsibilities under Section 102 of the Reform Act of 1994 (codified in 25 U.S.C. §4011), the Interior Department currently provides Plaintiff with the following, as it has done since 1995:

i. A periodic Statement of Performance, on a quarterly (or, upon request, monthly) basis, for all of Plaintiff's funds held in trust pursuant to the Act of June 24, 1938 (25 U.S.C. § 162a), in the form attached to herein as Exhibit 2. Conditional on the Interior Department continuing to provide Plaintiff with these or similar reports, Plaintiff

attests that the mailing of the foregoing satisfies the present reporting requirements of Section 102 of the Reform Act of 1994 (codified in 25 U.S.C. § 4011).

ii. A letter, on an annual basis, that relates to the Interior Department's annual audit of all funds held in trust for the benefit of Tribes pursuant to the Act of June 24, 1938 (25 U.S.C. § 162a). Conditional on the Interior Department continuing to provide Plaintiff with these or similar letters, Plaintiff attests that the mailing of the foregoing satisfies the present annual auditing requirements of Section 102 of the Reform Act of 1994 (codified in 25 U.S.C. § 4011).

e. In satisfaction of its reporting responsibilities under Section 303 (b)(2)(B)(ii) of the Reform Act of 1994 (codified in 25 U.S.C. § 4043 (b)(2)(B)(ii)), the Interior Department presently provides Plaintiff with periodic Statements of Performance, which contain a report of Plaintiff's trust fund investments and return on those investments, in the form attached hereto as Exhibit 2. Conditional on the Interior Department continuing, at a minimum, to provide Plaintiff with these or similar reports, Plaintiff attests that the mailing of the foregoing satisfies the present requirements of Section 303 (b)(2)(B)(ii) of the Reform Act of 1994 (codified in 25 U.S.C. § 4043 (b)(2)(B)(ii)).

f. Required notice of objections regarding information in future Periodic Statements of Performance. After the date of the Court's entry of this Joint Stipulation of Settlement as an Order, the following provisions shall apply:

i. Any objections that Plaintiff has regarding the completeness or accuracy of information maintained by the Interior Department or reported in a periodic

Statement of Performance or similar report must be presented in writing within twelve (12) months after the close of the calendar year in which the reported period occurs or twelve (12) months after the Statement of Performance or similar report is mailed to Plaintiff, whichever is later. The written objection shall include a reasonably particular description of the grounds for the objection. The written objection shall be presented to the Interior Department, by U.S. certified mail, at the following address:

United States Department of the Interior  
Office of the Special Trustee for American Indians  
4400 Masthead Street, N.E.  
Albuquerque, NM 87109  
Attn: Deputy Special Trustee for Field Operations

A copy of the written objection shall also be provided to the Regional Director of the Southern Plains Regional Office of the BIA. Within 60 days after receiving Plaintiff's written objection, the Interior Department will (a) provide Plaintiff with a revised Statement of Performance or similar report, (b) explain why the original Statement of Performance or similar report was correct, or (c) advise Plaintiff that additional time is needed to respond to the objection.

ii. Plaintiff's authorizing officials are entitled to request additional information regarding its trust accounts at any time. Plaintiff shall direct such requests to the following address:

United States Department of the Interior  
Office of the Special Trustee for American Indians  
4400 Masthead Street, N.E.  
Albuquerque, NM 87109  
Attn: Deputy Special Trustee for Field Operations



Plaintiff agrees to designate authorizing official(s) by Tribal Resolution and to notify the Interior Department in writing of any new designations of its authorizing officials. The Interior Department shall make all reasonable efforts to provide Plaintiff with the requested information, including making Interior Department personnel available to Plaintiff for questions, within thirty (30) days of the date of receipt of such request.

iii. The information reported in a periodic Statement of Performance or similar report mailed by the Interior Department to Plaintiff, to which no objection in writing is made to the Interior Department within twelve (12) months after the close of the calendar year in which the reported period occurs or twelve (12) months after the Statement of Performance or similar report is mailed to Plaintiff, whichever is later, shall be conclusively presumed to be accurate and correct. A failure by Plaintiff to make a timely written objection to information reported in a periodic Statement of Performance or similar report shall have no other legal effect or consequence, except for this conclusive presumption and the conditional waivers of certain claims set forth in Paragraph 4(f)(4); and this limitation of legal effect shall not apply to other acts and omissions of the parties, if any, with regard to any future claims or defenses of the Parties.

iv. The following conditional waiver and covenant not to sue applies to possible future claims that (a) Defendants failed to invest tribal income in a timely manner; (b) Defendants failed to obtain an appropriate return on invested funds; (c) Defendants failed to deposit monies into trust funds or disburse monies from trust funds in a proper and timely manner; and (d) Defendants failed to report or provide information about Defendants' actions

or decisions relating to Plaintiff's trust fund accounts. Such claims are hereby referred to as the "Future Trust Fund Mismanagement Claims." Excepting claims of fraud or gross negligence, Plaintiff conditionally waives and covenants not to sue the United States, its agencies (including but not limited to Defendants), its officials, its employees, or its agents, for Future Trust Fund Mismanagement Claims arising out of Plaintiff's trust funds for a particular calendar year, if Plaintiff does not present an objection in writing to the Department of the Interior, as specified in Paragraph 4(f)(1). This waiver and covenant not to sue is conditioned on the Interior Department continuing in the future, at a minimum, to provide Plaintiff with the reports specified above in Paragraph 4(d)(1).

g. For the purposes of this Joint Stipulation of Settlement, Plaintiff agrees that Treasury's limited role in the management of Plaintiff's trust funds is wholly defined by 25 U.S.C. § 161a(a).

5. a. Upon entry of the Court's order approving this settlement, or as soon thereafter as reasonably possible, Defendants shall transfer—or cause to be transferred—exactly \$685,000.00 of the sum of money set forth in Paragraph 2 above, to an account which shall be specified by Plaintiff to Defendants within 15 days of the date of the Court's entry of this Joint Stipulation of Settlement as an Order and in advance of Defendants' transfer of money and which is or shall be in a private bank or other third-party financial institution. This sum of \$685,000.00 shall be available for use by Plaintiff as it decides in its sole discretion. Defendants shall not transfer to or deposit in—or cause to be

transferred to or deposited in—Plaintiff’s “Proceeds of Labor” account or any other trust accounts this sum of \$685,000.00.

b. Upon entry of the Court’s order approving this settlement, or as soon thereafter as reasonably possible, Defendants shall deposit exactly \$345,000.00 of the sum of money set forth in Paragraph 2 above, into the United States Treasury to be held in trust. The Interior Department shall maintain this sum of \$345,000.00 in a trust fund account separate from Plaintiff’s “Proceeds of Labor” account, for the limited purpose of allowing Plaintiff to purchase land with that money. The sum of \$345,000.00 shall be invested in accordance with 25 U.S.C. § 161a(a), as directed by the Secretary of the Interior after reviewing written instructions provided by Plaintiff. Within 15 days of the Court’s entry of this Joint Stipulation of Settlement as an Order, Plaintiff shall present its specific written instructions to the Interior Department for the investment of the \$345,000.00 to be deposited pursuant to this paragraph. Plaintiff waives any and all claims relating to the investment or management of the sum of money (\$345,000.00) set forth in this paragraph, in the event that Plaintiff has provided no specific written investment instructions. The funds deposited into Plaintiff’s trust account pursuant to this paragraph shall remain in the trust account for a period not longer than six months from the initial date of deposit, or, if, within six months of the initial date of deposit of the funds into the trust account, Plaintiff has obtained a final agreement that can be executed to purchase land, for only the additional amount of time that is necessary to permit Plaintiff to execute the agreement to purchase the land with the trust funds. Six months after the initial date of deposit of the funds, Defendants will transfer or

cause to be transferred, from Plaintiff's trust account to the account specified by Plaintiff pursuant to Paragraph 12(a), any portion of the sum of \$345,000.00 remaining in Plaintiff's trust account that is not required to fulfill a final executable agreement to purchase land.

c. Plaintiff specifically waives any and all claims relating to the investment, disbursement, or other management of the funds set forth in Paragraph 2. Furthermore, Defendants shall have no duty or liability, including, without limitation, no liability as fiduciary, trustee, or similar status whatsoever, regarding Plaintiff's use or expenditure of the sum of money set forth in Paragraph 2. In particular, Defendant shall have no duty or liability in the event that Plaintiff exercises its discretion to expend the funds set forth in Paragraph 12(b) for any purpose other than the purchase of land. This paragraph does not alter or affect Defendants' trust fund management duties or responsibilities, if any, regarding any funds—other than the sum of money set forth in Paragraph 2 above—that Plaintiff puts or may put into trust.

6. Plaintiff does not waive or release in this Joint Stipulation of Settlement any claims other than those that it waives or releases specifically herein. Defendants do not waive herein any defenses that they have or may have regarding any claims that Plaintiff may assert in subsequent litigation or administrative proceedings.

7. This Joint Stipulation of Settlement is the entire agreement between the Parties in this case. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Joint Stipulation of Settlement. The terms of this Joint Stipulation of Settlement may not be changed, revised, or modified, except as provided by

a written instrument that is signed by the Parties to this Joint Stipulation of Settlement and that is approved and entered by this Court as an Order. This Joint Stipulation of Settlement shall be effective upon the date of the Court's entry of the Joint Stipulation of Settlement as an Order.

8. As soon as practicable after receiving notice of the Court's entry of this Joint Stipulation of Settlement, the Parties will execute and file a joint motion and proposed order to dismiss this case with prejudice (attached hereto as Exhibit 3).

9. No term or provision of this Joint Stipulation of Settlement will constitute or will be construed as a commitment or a requirement that Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation. In the event that the Anti-Deficiency Act, any other applicable law, or regulation precludes Defendants from obligating or paying the sum of money set forth in Paragraph 2 above, this Joint Stipulation of Settlement, including its terms, conditions, releases, and dismissals, shall be deemed null, void and unenforceable.

10. The undersigned representative(s) for each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Joint Stipulation of Settlement and to bind legally such party or parties to it. In particular, undersigned counsel for Plaintiff certifies that the Tribal Chairman and the Tribal Business Committee have reviewed this Joint Stipulation of Settlement and that, by Tribal resolution signed by the Tribal Chairman and the Tribal Business Committee, they

have approved of and authorized the execution of this Joint Stipulation of Settlement by Plaintiff, by and through its counsel.

11. Each party shall be responsible for its own attorneys' fees and costs, as well as any other fees and costs, related to this case.

12. This Joint Stipulation of Settlement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same instrument. Facsimile signatures shall have the same effect as original signatures in binding the parties hereto.

13. After entry of this Joint Stipulation of Settlement as an Order and dismissal with prejudice of this case, if there is a dispute over compliance with any term or provision of the Joint Stipulation of Settlement, the disputing party will notify the other party in writing of the dispute. The parties will attempt to work out the dispute informally before seeking judicial review by this Court.

14. The disputing party will engage the other party in informal dispute resolution. During this informal dispute resolution period, which will not exceed 90 days (unless the parties agree to an extension of the period), the parties will meet as many times as both deem necessary to discuss and attempt to resolve the dispute.

15. If the parties are unable to resolve the dispute through informal dispute resolution, either party may file a motion asking that the United States District Court for the Western District of Oklahoma enforce the relevant term(s) and provision(s) of the Joint Stipulation of Settlement. The parties hereby agree and stipulate that this Court shall have

continuing jurisdiction only for the limited purpose of interpreting and enforcing the terms and conditions of this Joint Stipulation of Settlement, after it has been entered as an Order of the Court.

16. Except as provided in Paragraphs 4, 5(b), and 5(c) above, nothing in this Joint Stipulation of Settlement shall have the effect of altering existing federal law or regulations relating to the relationship and dealings between the parties.

IT IS SO ORDERED this 20th day of October, 2010.

  
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ROBIN J. CAUTHRON  
United States District Judge